

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AYGUL SUSHKOVA,

Petitioner,

vs.

Case No. 17-3715

MARCO DESTIN INC.,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

This matter came before the undersigned Administrative Law Judge upon transmittal of a Petition for Relief filed by Petitioner, Aygul Sushkova, from the Florida Commission on Human Relations. The Petition for Relief alleges discriminatory practices by Respondent, Marco Destin Inc.

Upon consultation with the parties, a final hearing was set for August 29, 2017, by way of video teleconference between the cities of Tallahassee and Panama City, Florida.

On Tuesday, August 29, 2017, the video teleconference was initiated by DOAH. Petitioner was to appear at the Panama City site, but was not in attendance as of 9:30 a.m., Central Time (10:30 a.m., Eastern Time). In attendance at the Tallahassee site were Mark Bonfanti, Esquire, counsel for Respondent, and the undersigned.

The undersigned called the hearing to order. A brief recess was then taken in order to allow Petitioner time to appear if she so desired. At approximately 9:50 a.m., Central Time (10:50 a.m., Eastern Time), the undersigned re-convened the final hearing. At that time, counsel for Respondent moved for dismissal of the action on the basis that Petitioner, in abstentia, could not satisfy her minimum burden of proof concerning the claim of discrimination.

The general rule in an administrative hearing is that the party asserting the affirmative of an issue has the burden of presenting evidence as to that issue. Dep't of Banking & Fin.,

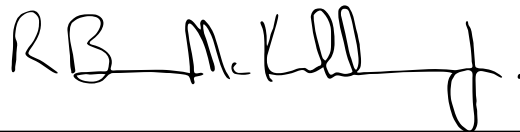
Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933 (Fla. 1996) (citing Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981)). According to section 120.57(1)(k), "[f]indings of fact shall be based upon a preponderance of the evidence . . . except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized." In this case, therefore, Petitioner would have to present evidence to support her claim.

In McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-803 (1973), the U.S. Supreme Court explained that the complainant has the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996), aff'd 679 So. 2d 1183 (Fla. 1996).

Petitioner in the instant case has failed to establish a prima facie case of discrimination. There is no further action that Petitioner can pursue in this matter. The motion to dismiss is therefore well-taken.

Based upon the foregoing, it is hereby RECOMMENDED that a final order be entered by the Florida Commission on Human Relations denying the Petition for Relief filed by Aygul Sushkova, Petitioner.

DONE AND ENTERED this 1st day of September, 2017, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of September, 2017.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.